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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	MM Docket No. 93-300
)	
STEPHEN O. MEREDITH)	File No. BPH-920430MD
)	
AL HAZELTON)	File No. BPH-920430ME
)	
For Construction Permit for a)	
New FM Station on Channel 243C1)	
in Audubon, Iowa)	

TO: The Honorable John M. Frysiak
Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF AGREEMENT

Pursuant to Section 73.3525 of the Commission's Rules, Stephen O. Meredith ("Mr. Meredith") and Al Hazelton ("Mr. Hazelton"), by their respective attorneys, jointly request approval of the attached Settlement Agreement and termination of the above-referenced comparative FM proceeding.

1. Summary of Negotiations. These mutually-exclusive FM construction permit applications for Audubon, Iowa, were designated for hearing by Hearing Designation Order, 8 FCC Rcd 8730, released December 14, 1993. The parties have now agreed to a settlement of the proceeding. The instant Joint Request transmits a Settlement Agreement to the Presiding Officer for approval, which would settle this case. There is no impediment to a grant of Mr. Meredith's application since, upon dismissal of Mr. Hazelton's application, Mr. Meredith will be the only applicant remaining in the proceeding, and no disqualifying issues have been added against him.

No. of Copies rec'd _____
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2. Description of Agreement. The Settlement Agreement (copy attached hereto) provides that Mr. Hazelton shall dismiss his application in consideration of a total cash payment of \$1,000.00 by Mr. Meredith as set forth in the Settlement Agreement. The payment is less than Mr. Hazelton's legitimate and prudent expenses as that term is defined by Section 73.3525(i) of the Rules. The payment is to be made within five (5) business days after the construction permit is granted to Mr. Meredith and the Order granting the construction permit has become a Final Order. Mr. Meredith in the Settlement Agreement acknowledged that Mr. Hazelton desires to resolve favorably to himself the issues specified by the Presiding Judge in Memorandum Opinion and Order ("MO&O"), FCC 94M-148, released March 11, 1994. Mr. Hazelton filed on March 21, 1994, a "Petition for Leave to File Appeal". Mr. Meredith agreed to join with Mr. Hazelton in requesting that the Presiding Judge treat the Petition for Leave to File Appeal as a Petition for Reconsideration of the MO&O. In the event Mr. Hazelton elects to file a Motion for Summary Decision on the issues designated in the MO&O, Mr. Meredith agreed that he will not file any pleading in connection therewith unless requested to do so by the FCC. Mr. Hazelton acknowledged and agreed that the Settlement Agreement and the dismissal with prejudice of his application contemplated by the Settlement Agreement are not conditioned upon the Presiding Judge's favorable action on Mr. Hazelton's papers. Mr. Hazelton has agreed that neither he, nor any of his representatives will appeal from, or seek reconsideration of, any order granting Mr. Meredith's application. Mr. Hazelton's application is to be dismissed with prejudice as of the date of the Presiding

Judge's action on the Joint Request without regard to the status of the issues specified in the MO&O. Declarations from Messrs. Hazelton and Meredith are attached hereto showing (a) the amount legitimately and prudently expended by Mr. Hazelton in preparing and prosecuting his application; (b) the reasons why the settlement is in the public interest; and (c) that neither of the applications were filed for the purpose of reaching or carrying out the settlement agreement.

3. Mr. Meredith's Qualifications. There are no issues pending or requested against Mr. Meredith which would raise questions concerning his qualifications to be a Commission licensee.¹

WHEREFORE, in consideration of the above, it is respectfully requested that (a) the Settlement Agreement be approved, and (b) the application of Al Hazelton (File No. BPH-920430ME) BE DISMISSED WITH PREJUDICE and the application

¹ Motions to specify issues against Meredith were denied by Memorandum Opinion and Order, FCC 94M-155, released March 16, 1994; and Memorandum Opinion and Order, FCC 94M-175, released March 18, 1994.

of Stephen O. Meredith for a new commercial FM station at Audubon, Iowa (File No. BPH-930430MD) be GRANTED.

Respectfully submitted,

STEPHEN O. MEREDITH

By: 

Gary S. Smithwick
Its Attorney

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

DATED: March 30, 1998

AL HAZELTON

By: _____

Barry A. Friedman, Esquire
Its Attorney

Semmes, Bowen & Semmes
1025 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20036

DATED: _____

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Respectfully submitted,

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DATED: _____

AL HAZELTON

By: _____

Barry A. Friedman, Esquire
Its Attorney

Semmes, Bowen & Semmes
1025 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20036

DATED: 3/30/94

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this ____ day of March, 1994, by and between STEPHEN O. MEREDITH (hereinafter referred to as "Meredith"), and AL HAZELTON ("Hazelton");

WITNESSETH:

WHEREAS, Meredith and Hazelton are applicants to the Federal Communications Commission (herein "FCC") for a construction permit for a new FM Broadcast Station to operate on Channel 243C1 at Audubon, Iowa; and

WHEREAS, the simultaneous operation of two stations on the same frequency in Audubon would create intolerable electrical interference; and

WHEREAS, the FCC has held hearings in MM Docket No. 93-300 to determine which, if either, of the applications should be granted;

WHEREAS, the parties desire to avoid the time, expenses, and effort associated with further proceedings and to implement the new FM service to the Audubon public as soon as possible, an objective which is in the public interest; and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties as follows:

1. **Consideration.** Subject to the conditions set out herein and the approval of this Settlement Agreement by the FCC, Hazelton agrees pursuant to §73.3525 of the FCC's Rules, to dismiss his application (File No. BPH-920430ME) for a construction permit for a new FM Broadcast Station at Audubon, Iowa. In return for such dismissal by Hazelton, Meredith agrees to pay the sum of ONE THOUSAND (\$1,000.00) DOLLARS to Hazelton, which is less than his legitimate and prudent expenses in preparing and prosecuting his

application, in cash or certified funds on or before the due date for such payment as described in Paragraph 5 of this Agreement.

2. Hazelton Issues. Meredith hereby acknowledges that Hazelton desires to resolve favorably to himself the issues specified by the Presiding Judge in Memorandum Opinion and Order ("MO&O"), FCC 94M-148, released March 11, 1994. Hazelton filed on March 21, 1994, a "Petition for Leave to File Appeal". Meredith will join Hazelton in requesting that the Presiding Judge treat the Petition for Leave to File Appeal as a Petition for Reconsideration of the MO&O and to withdraw the issues designated against Hazelton. Alternatively, in the event Hazelton elects to file a Motion for Summary Decision on the issues designated in the MO&O, Meredith agrees that he will not file any pleading in connection therewith unless requested to do so by the FCC. Hazelton hereby acknowledges and agrees that this Agreement and the dismissal with prejudice of his application contemplated by this Agreement are not conditioned upon the Presiding Judge's favorable action on Hazelton's papers. Neither Hazelton nor any of his representatives will appeal from, or seek reconsideration of, any order granting Meredith's application. Hazelton's application shall be dismissed with prejudice as of the date of the Presiding Judge's action on the Joint Request described in paragraph 3 hereof.

3. Request for Commission Approval. Within five (5) days after execution of this Agreement by both the undersigned parties, the parties shall file a Joint Request, addressed to the Presiding Officer of the FCC and such other particular officers, Bureau, or other appropriate sub-division of the FCC, having jurisdiction to act in this matter. The Joint

Request shall request approval of this Agreement and shall be accompanied by such documents as are necessary and/or appropriate to obtain such approval, including the declarations and itemizations of expenses required by Section 73.3525 of the Rules. Both undersigned parties shall vigorously support and defend the Joint Request and do all things necessary and appropriate to obtain a grant thereof.

4. Cooperation of Parties. Should the FCC refuse to approve this Agreement, the undersigned parties hereby agree that they will immediately make good faith efforts to resolve each FCC objection in order to obtain FCC approval. The undersigned parties agree that none of them shall do or permit to be done anything which would delay or impede the approval of this Agreement or the subsequent grant of the construction permit to Meredith.

5. Payment Procedures. The payment contemplated by Paragraph 1 of this Agreement shall be payable in cash and made within five (5) business days after the Commission's Order or Orders approving said payment, granting Meredith's application (File No. BPH-920430MD), and dismissing the application of Hazelton becomes final. A final Order of the Commission for purposes of this Agreement means an Order which has become final, the time for filing any appeals and/or petitions for reconsideration before the FCC or any Court of competent jurisdiction having expired and no such petitions or appeals having been filed, or, if any petitions and appeals are filed, such appeals and/or petitions having been disposed of favorably to this Agreement, and the time for filing any additional appeals having expired.

6. Entire Agreement. This Agreement constitutes the entire understanding between Meredith and Hazelton and no other consideration, action or forbearance is contemplated or

relied on by them. It is understood and agreed by the parties hereto that a condition precedent to the obligations of Meredith unless this Agreement is the dismissal with prejudice of the application of Hazelton.

7. **Benefit.** This Agreement shall inure to the benefit of and be binding upon, the parties hereto, their successors and assigns. In the event Meredith assigns any of its rights to the construction permit to any other entity, whether by acquisition or merger, Meredith shall cause any successor in interest or assign to assume Meredith's obligations under this Settlement Agreement.

8. **Counterparts.** This Agreement may be executed in counterparts.

9. **Notices.** Any Notices required by this Agreement shall be effective if sent by certified mail, return receipt requested, postage prepaid as follows:

If to Meredith:

Mr. Stephen O. Meredith
85 Glen Cross Road
Wellesley, Massachusetts 02181

cc: Gary S. Smithwick, Esquire
Smithwick & Belendiuk, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036

If to Hazelton:


Mr. Al Hazelton
304 Durant
Harlan, Iowa 51537

cc: Barry A. Friedman, Esquire
Semmes, Bowen & Semmes
1025 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

10. Choice of Law. This Agreement shall be interpreted according to Iowa law.

STEPHEN O. MEREDITH

Dated: Mar. 24, 1994 By: _____


Stephen O. Meredith

AL HAZELTON

Dated: _____ By: _____

Al Hazelton

AUDUBON/PN/SETTLE.AGT

cc: Barry A. Friedman, Esquire
Seamus, Bowen & Seamus
1025 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

10. Choice of Law. This Agreement shall be interpreted according to Iowa law.

STEPHEN O. MEREDITH

Dated: _____

By: _____

Stephen O. Meredith

AL HAZELTON

Dated: 3/25/94

By: _____


Al Hazelton

AUDUBON/PN/SETTLER/AT

DECLARATION

Al Hazelton declares under penalty of perjury that the following is true and correct.

1. I am the applicant for a construction permit for a new FM radio station at Audubon, Iowa in File No. BPH-920430ME.

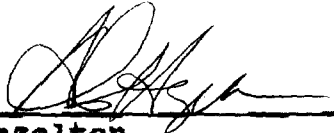
2. My application was not filed for the purpose of reaching or carrying out any settlement agreement.

3. I have reviewed and signed the Settlement Agreement between myself and Stephen O. Meredith.

4. The Settlement Agreement is considered by me to be in the best interest because (a) it will eliminate the need for continued litigation before the FCC, and (2) it will result in the initiation of new FM radio service to the residents of Audubon, Iowa.

5. The attached expenses were incurred by me in furtherance of my application.

Executed at Atlantic, Iowa on the 29 day of March,
1994.


Al Hazelton

Expenses Incurred

1. FCC Filing Fee - \$2,030.00
2. FCC Hearing Fee - \$6,760.00

DECLARATION

I, Stephen O. Meredith, declare as follows:

1. I am an applicant for a construction permit for a new FM station at Audubon, Iowa (File No. BPH-920430MD).
2. I have read and signed a settlement agreement with Al Hazelton, which would result in a grant of the construction permit to me, and the dismissal of Mr. Hazelton's application.
3. The settlement agreement is considered by me to be in the public interest because (a) it would eliminate the need for further FCC proceedings, and (b) it would result in the more rapid initiation of new FM service to the residents of Audubon, Iowa.
4. My application was not filed for the purpose of reaching or carrying out the settlement agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of March, 1994.


STEPHEN O. MEREDITH

CERTIFICATE OF SERVICE

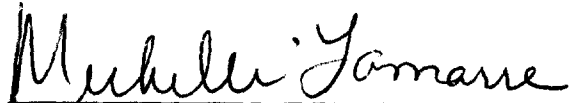
I, Michelle M. Lamarre, a paralegal in the law firm of Smithwick & Belendiuk, P.C., certify that on this 30th day of March, 1994, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

Honorable John M. Frysiak (*)
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 223
Washington, DC 20554

Robert Zauner, Esq. (*)
Hearing Branch
Federal Communications Commission
2025 M Street, N.W.
Room 7212
Washington, DC 20554

Barry A. Friedman, Esq.
Semmes, Bowen & Semmes
1025 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20036
Counsel for Al Hazelton

(*): By Hand Delivery


Michelle M. Lamarre